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December 22, 2008

BY HAND

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6127

Dear Mr. Jordan:

We are writing this letter on behalf of President-Elect Barack Obama, Obama for America (the "Committee") and Martin Nesbitt, as treasurer, (collectively referred to as the "Respondents") in response to the Complaint filed in the above-referenced matter by the California Republican Party (the "Complainant"). For the reasons set forth below, the facts do not support a reason to believe finding in this matter and the Complaint should be dismissed.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act. See 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. See Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. See *id.*

Here, Complainant makes four separate allegations against Respondents, each of which is unsupported by the facts and should be dismissed.

First, the Complaint alleges that the Committee provided its donor list to Project Vote, an ACORN affiliate, and failed to report the transfer of the list as a disbursement. See Compl. at 2; see also 11 C.F.R. § 104.3(b). The Committee never gave its donor lists to Project Vote, ACORN, or any other organization. The fact that the Committee's privacy policy may have

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permitted the Committee to transfer donor lists to organizations with similar viewpoints and objectives does not mean that the Committee did so in this instance. Whenever the Committee did transfer its donor lists to other organizations, it did so for a fee pursuant to a rental agreement and reported the transactions accordingly. Contrary to the Complaint's unsubstantiated assertion, however, the Committee never gave or rented its list to Project Vote. Attached is an affidavit to this effect from Michael Dykes, former Finance Chief of Staff for Obama for America. See Exhibit A. Because the Committee did not transfer the lists to Project Vote, there was no disbursement to report and therefore no violation of federal campaign finance law.

Second, the Complaint alleges that the Committee's use of campaign funds to pay for the candidate's trip to Hawaii is a violation of the Act's personal use restrictions. See Compl. at 3. It is not.

The expenses associated with the trip to Hawaii would not have been incurred irrespective of President-Elect Obama's candidacy. President-Elect Obama traveled to Hawaii on October 23 and 24 – less than two weeks before the general election. Although the purpose of the trip was to visit his dying grandmother, the fact that the election was less than two weeks away rendered it impossible for him *not* to travel to any and all destinations on an aircraft equipped with the space and capacity to address security and working requirements. Had he not been a candidate, he would not have been required to use his campaign plane to travel to Hawaii. For security reasons alone, President-Elect Obama could not fly commercially to Hawaii. The Secret Service required that he use his campaign plane. The use of campaign funds to pay for the candidate's trip was therefore permissible under the statute and regulations. See 2 U.S.C. § 439a(b); 11 C.F.R. § 113.1(g).

Moreover, under Commission regulations, the expense is also analyzed with reference to the activity conducted at each stop. Any stop is a campaign stop, and the expense of travel is payable as a campaign expense, if the campaign activity at the stop is more than "incidental". See 11 C.F.R. § 106.3(b)(3). At all times during the period two weeks before the general election, wherever the President-Elect traveled, his campaign activity was more than incidental. Campaign aides traveled with him to Hawaii, he participated in numerous campaign-related phone calls and meetings while in Hawaii, and his trip was reported on extensively by the national media. For this reason, too, the cost of travel was properly payable as a campaign expense.

Third, with respect to Saul Ewing, LLP, the Complaint fails to allege any facts that would describe a violation of federal campaign finance law on the part of the Respondents. See Compl. at 5. Relying on one news article published before the election, the Complainant merely speculates that the Committee would be in violation of the federal contribution limits if the "usual and normal" value of any unreimbursed legal services provided by Saul Ewing exceeds

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\$2,300. *See id.* In fact, the Committee has no knowledge of any legal services provided by Saul Ewing to the Committee in connection with "OFA training and election-day tasks." *Id.* Furthermore, the Committee is unaware of any instance where Saul Ewing may have made a contribution to the Committee by paying its attorneys for services that the attorneys then rendered without charge to the Committee. Because the Complaint does not allege any facts to suggest that Respondents actually accepted a contribution from Saul Ewing in excess of the federal limits, there is no basis for finding reason to believe that Respondents have violated the Act.

***Fourth*, the Complaint alleges that the Obama Victory Fund ("OVF") knowingly accepted a corporate contribution in connection with a September 26, 2008 fundraiser held at VIDA Fitness, a fitness center in Washington, D.C. *See* Compl. at 7. OVF is a joint fundraising committee authorized by Obama for America and the Democratic National Committee ("DNC").**

In this case, the DNC's Gay and Lesbian Leadership Council organized the fundraiser at VIDA Fitness to raise money for OVF; no Obama for America employees were involved in organizing the event. The DNC sent invitations to the event via email to approximately 500 Lesbian, Gay, Bisexual and Transgendered donors in the metropolitan Washington, D.C. area. A copy of the invitation is attached as Exhibit B.

Contrary to what is asserted in the Complaint, OVF paid VIDA Fitness the usual and normal charge for expenses associated with the event. *See* 11 C.F.R. § 100.52(d). Such expenses included the use of VIDA Fitness facilities and all refreshments. OVF received an invoice for the event on November 26, 2008, and paid the full amount due on December 5, 2008.

Without the prior knowledge or consent of Obama for America, the DNC, or OVF, the owner of VIDA Fitness, David von Storch, emailed separate invitations to the event to individuals on VIDA Fitness's customer list. None of the committees involved (Obama for America, the DNC, or OVF) requested that Mr. von Storch send out invitations to his customer lists, nor did they ever authorize the emails.

Mr. von Storch never acted as an agent of Obama for America, OVF, or the DNC; he lacked the authority, either express or implied, to solicit, direct, or receive contributions, or to create or distribute communications, on behalf of the committees. *See* 11 C.F.R. §§ 300.2(b), 109.3(a). Because Mr. von Storch acted as an individual volunteer without the committees' authority, and not as an agent of the committees, Obama for America, OVF, and the DNC cannot be held liable for his actions.

Although OVF did not request or authorize the use of the VIDA Fitness customer list and therefore did not knowingly accept a contribution, it is our understanding that Mr. von Storch

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will pay \$3,000 for the use of the list. OVF will report the receipt of an in-kind contribution from Mr. von Storch as an amendment to its September 2008 report.

Because OVF paid for the expenses associated with the VIDA Fitness event, and the emails to VIDA Fitness's customer list were sent by Mr. von Storch without the knowledge or authority of Obama for America, OVF, or the DNC, the facts alleged in the Complaint do not support finding reason to believe that Respondents have acted in violation of federal campaign finance law.

In sum, the Complaint does not allege any facts that would describe a violation of federal campaign finance law on the part of the Respondents. Pursuant to 11 C.F.R. § 111.4(d), Respondents respectfully request that the Commission immediately dismiss the Complaint and take no further action.

Very truly yours,



Robert F. Bauer
Rebecca Gordon

Counsel to Obama for America and Martin H. Nesbitt, Treasurer

**The Gay and Lesbian Leadership Council
of the
Democratic National Committee**

Cordially invites the LGBT Community and Allies to a reception with

**Sarah Jessica Parker
Benefiting the Obama Victory Fund**

Friday, September 26, 2008

**Vida Fitness
1515 15th Street, NW
Washington, DC**

6:00 PM – 8:00 PM

Host Committee: \$2,500 (Write/Raise)

VIP: \$1,000 (Write)

***Host Committee members are invited to a VIP reception at 6:00 PM at HALO,
located at 1435 P Street, NW***

Supporter: \$250

Friend: \$100

(Limited tickets at this level)

**To R.S.V.P. please complete the form below or visit:
<https://donate.barackobama.com/page/contribute/DCSJP>**

**If you have any questions, or would like additional information, please contact
Thomas Petrillo @ or at**

RSVP by fax to 202-572-7917

Contributions and gifts to Obama Victory Fund are not deductible for federal income tax purposes.

**Paid for by Obama Victory Fund, a joint fundraising committee authorized by Obama for America and
the Democratic National Committee.**

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The first \$2,500 of each contribution from an individual will be allocated to Obama for America and will be considered designated for the general election. The next \$25,500 of each contribution from an individual will be allocated to the Democratic National Committee. Any contributor may designate his or her contribution for a particular participant. (Participants are Obama for America and the DNC). The allocation formula above may change if any contributor makes a contribution that, when allocated, would exceed the amount that the contributor may lawfully give to either participant.

Please make checks payable to:
OBAMA VICTORY FUND
Thomas Petillo
430 S. Capitol Street, SE
Washington, DC 20003
Fax: (202) 572-7917

Total Amount: \$ _____

Click here to contribute online at <https://donate.barackobama.com/page/contribute/DCSJ1>

Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and employer of individuals whose contributions exceed \$200 in an election cycle.

First & Last Name: _____

My Guests Name: _____

Address: _____

City/State/Zip: _____

If foreign address provide US passport number: _____

Employer: _____ Occupation: _____

Work Phone: _____ Work Fax: _____

Home Phone: _____ Email: _____

☐ I certify that I am a U.S. citizen or legal permanent resident of the U.S.

Signature: _____

Contribute by Credit Card

Please bill my personal credit card: ☐ Visa ☐ MasterCard ☐ AMEX ☐ Discover

Card Number: _____ Exp: _____

Name as it appears on the card: _____

Signature: _____

Second Name on Account, if Joint Account*: _____

*Contributions will be evenly attributed between names.

2nd Name Employer: _____ 2nd Name Occupation: _____

Second Signature for Joint Account: _____

Invited by: _____

OVF Staff Name: _____ Signature: _____

Obama Victory Fund does not accept contributions from currently registered federal lobbyists, registered foreign agents, political action committees, or minors under the age of 16. Federal law prohibits the acceptance of corporate contributions.
Contributions and gifts to the Obama Victory Fund are not deductible for federal income tax purposes.

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